

### **REMARKS**

In the September 10, 2009 Office Action, all of the claims stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

#### ***Status of Claims and Amendments***

In response to the September 10, 2009 Office Action, Applicant has amended claims 1, 3-7, 10 and 11 as indicated above. Claims 2, 8, 9 and 12 have been cancelled by the current Amendment. Thus, claims 1, 3-7, 10 and 11 are pending, with claim 1 being the only independent claim. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

#### ***Rejections - 35 U.S.C. § 102***

In paragraphs 1 and 2 of the Office Action,

- (1) claims 1-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0098117 (Ammann); and
- (2) claim 1-3, 5-12 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,518,059 (Butts).

In response, Applicants have amended independent claim 1 to clearly define the present invention over the prior art of record.

In particular, independent claim 1 now recites a temperature control device for culturing fungi at a predetermined culturing temperature, the temperature control device comprising:

- a cassette for holding a culture medium for culturing microorganisms or cells;
- a heating mechanism configured to heat said cassette;
- a cooling mechanism configured to cool said cassette;
- a temperature-setting unit configured to set at least approximately 27°C and 30 to 32°C as said predetermined culturing temperature by switching between those temperatures;

a heating-and-cooling control unit configured to control operations of said heating mechanism and said cooling mechanism based on a temperature set by said temperature-setting unit; and

a communication unit through which a plurality of said temperature control devices are connected to each other. Since *temperature setting can be switched between the range(s)* as recited in claim 1, there is an effect that different optimal temperature can be adopted when culturing fungi, depending on whether the fungi is mold or yeast. Moreover, the temperature control device includes *both a cooling mechanism and a heating mechanism* to switch temperatures set forth in independent claim 1. Clearly, this structure now recited in independent claim 1 is *not* disclosed or suggested by the Ammann publication or the Butts patent.

With respect to rejection (1) based on the Ammann publication, the Office Action asserts that each incubator is capable of adopting a first predetermined culturing temperature of 27°C and a second predetermined culturing temperature of 30 to 32°C. However, the claims now positively recite that “a temperature-setting unit configured to set at least approximately 27°C and 30 to 32°C as said predetermined culturing temperature by switching between those temperatures” not that they are merely capable of adopting the claimed temperatures. In other words, independent claim 1 recites very specific temperature(s)/range, which are not disclosed in the Ammann publication. In fact, the Amman publication makes no mention of the claimed temperature(s)/range. Rather, in paragraphs [0249]-[0251] mentioned in the Office Action, the Ammann publication indicates that an incubating temperature of 60°C is used. In other words, the Amman publication cannot anticipate “a temperature-setting unit configured to set at least approximately 27°C and 30 to 32°C as said predetermined culturing temperature by switching between those temperatures” since this reference does not disclose this specific temperature and temperature range. Thus, the Amman publication not only fails to disclose the arrangement of independent claim 1, but teaches away from the claimed arrangement (i.e., teaches using a much higher temperature than claimed).

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Based on the above explanation, Applicant respectfully submits that claim 1, as now amended, is not

anticipated by the Ammann publication. Accordingly, withdrawal of this rejection of claims 1, 3-7, 10 and 11 is respectfully requested.

With respect to rejection (2) based on the Butts patent, the Office Action asserts that each temperature control device includes a heater (Figure 5:42, 104) fully capable of maintaining a first temperature of 27°C and a second temperature of 30 to 32°C. However, the claims now positively recite that “a temperature-setting unit configured to set at least approximately 27°C and 30 to 32°C as said predetermined culturing temperature by switching between those temperatures” not that they are merely capable of adopting the claimed temperatures. In other words, independent claim 1 recites very specific temperature(s)/range, which are not disclosed in the Butts patent. In fact, the Butts patent makes no mention of the claimed temperature(s)/range. Rather, in column 4, lines 20-49 ~~mentioned in the Office Action, the Butts patent makes no indication of any particular~~ temperature setting being used. Moreover, in column 3, lines 25-27, a temperature of 42°C is mentioned. In other words, the Butts patent cannot anticipate “a temperature-setting unit configured to set at least approximately 27°C and 30 to 32°C as said predetermined culturing temperature by switching between those temperatures” since this reference does not disclose this specific temperature and temperature range. Thus, the Butts patent not only fails to disclose the arrangement of independent claim 1, but teaches away from the claimed arrangement (i.e., teaches using a much higher temperature than claimed).

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Based on the above explanation, Applicant respectfully submits that claim 1, as now amended, is not anticipated by the Butts patent. Accordingly, withdrawal of this rejection of claims 1, 3, 5-7, 10 and 11 is respectfully requested.

#### ***Prior Art Citation***

In the Office Action, additional prior art references were made of record. Applicant believes that these references do not render the claimed invention obvious.

Appl. No. 10/585,613  
Amendment dated December 10, 2009  
Reply to Office Action of December 10, 2009

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In view of the foregoing amendment and comments, Applicant respectfully asserts that claims 1, 3-7, 10 and 11 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested. If there are any questions regarding this Amendment, please feel free to contact the undersigned.

Respectfully submitted,

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